

**BEFORE THE
COMMISSION ON LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

Michael and Courtney Bowlds

Complainants

V.

First Baptist Church of Silver Spring

Respondent

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Case No. 32894

Rental Facility: 13718 Town Line Road, Silver Spring, MD (Rental License 42627)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (“Commission”), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 6th day of March, 2012, found, determined, and ordered, as follows:

BACKGROUND

On October 21, 2011, Michael and Courtney Bowlds (“Complainants”), current tenants at 13718 Town Line Road, Silver Spring, Maryland (“Property”), a licensed single family unit, in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs (“OLTA”) in the Department of Housing and Community Affairs (“Department”), in which they allege that their landlord, First Baptist Church of Silver Spring, (“Respondent”), owner of the Property: (1) failed to inform them of their rights pursuant to the security deposit law when the security deposit was tendered; (2) failed to make requested/required repairs to the Property in a timely fashion; (3) failed to reimburse them for costs they incurred to make repairs not performed by the Respondent; and (4) issued them a Notice To Vacate in retaliation for their complaints.

In response, the Respondent: (1) acknowledges that it failed to provide Complainants with a receipt and required disclosures when it received the Complainants’ security deposit; (2) contends that it made all necessary repairs to the Property in a timely manner; (3) contends it is not responsible for the costs the Complainants incurred when they changed the light fixtures; and (4) contends that they did not issue the Complainants a retaliatory Notice To Vacate.

The Complainants are seeking an Order from the Commission for the Respondent to: (1) return their \$2000.00 security deposit and a \$4000.00 penalty; (2) return the rent already paid to the Respondent in the amount of \$28,800.00; (3) refund \$2100.00 for costs incurred to make repairs and improvements to the Property; (4) \$15,000.00 for 6 months of substitute housing; (5) \$1000.00 for attorney's fees; and (6) \$23,000.00 for pain and suffering.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review. On February 7, 2012, the Commission voted to schedule an Emergency Public Hearing ("Hearing") for February 21, 2012 because the January 20, 2011, notice to vacate issued by the Respondent was to expire on February 29, 2012.. On February 13, 2012, Respondent's attorney, Richard Puchowicz, requested a continuance due to a scheduling conflict, which request was granted. The Commission rescheduled the Hearing for February 28, 2012. On February 22, 2012, the Complainants requested a continuance which request was denied. The Hearing in the matter of Michael and Courtney Bowlds vs. First Baptist Church of Silver Spring, relative to Case No. 32894, commenced on February 28, 2012, and concluded on that date.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time.

At the Hearing, the Respondents made a motion for dismissal based upon OLTA's initial closing of the case on October 27, 2011, alleging violation of due process. The Panel Chairperson, David Greenstein, noted the motion for the record. The Motion was subsequently denied. The Hearing took place as scheduled.

Present and sworn at the hearing and presenting evidence was Complainant Michael Bowlds; Richard Puchowicz, Attorney for the Respondent, First Baptist Church of Silver Spring; Duncan McIntosh, Pastor for First Baptist Church of Silver Spring; Jim Reed; James Doolittle, and Sasan Nikkhah-Chalezamini, witnesses for the Respondent. Complainant Courtney Bowlds did not appear at the hearing.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission entered into evidence a Response to Allegations, with 20 separate Exhibits attached, marked as Respondent's Exhibit No. 1. The Commission entered into evidence for the Complainants the following: (1) an email dated October 1, 2011, marked as Complainants' Exhibit No.1; (2) a letter from Department of Police to Michael Bowlds, dated January 24, 2011, marked as Complainants' Exhibit No. 2; (3) an email dated January 26, 2011, marked as Complainants' Exhibit No. 3; (4) an email dated January 13, 2011, marked as Complainants' Exhibit No 4; (5) an email dated March 29, 2011, marked as Complainants' Exhibit No 5; (6) an invoice from Ricardo Ferman dated March 31, 2011, marked as Complainants' Exhibit No 6; (7) an email dated April 10, 2011, marked as Complainants' Exhibit No 7; (8) an email dated May 11, 2011, marked as Complainants' Exhibit No 8; (9) a document dated 8/16/2011 regarding air conditioning maintenance, marked as Complainants' Exhibit No 9; (10) an email dated August 20, 2011, marked as Complainants' Exhibit No 10; (11) an email dated September 16, 2011, marked as Complainants' Exhibit No 11; (12) a document titled Notes from Mike Husic dated September 17, 2011, marked as

Complainants' Exhibit No 12; (13) an email dated September 13, 2011, marked as Complainants' Exhibit No 13; (14) an email dated May 29, 2011, marked as Complainants' Exhibit No. 14; and (15) a document titled Proposed Terms of Lease of Parsonage between FBC and Tenant, marked as Complainants' Exhibit No. 15.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. The Complainants and Trustee Jim Reed, on behalf of the Respondent, made an oral agreement that the Complainants would lease the Property for one year with the possibility of a six month extension and the option of a right of first refusal to purchase the Property if the Respondent decided to sell the house. At the time of this agreement, Complainant Michael Bowlds was a Deacon at the First Baptist Church of Silver Spring.

2. Complainant Courtney Bowlds moved into the Property in August 2010 and Complainant Michael Bowlds moved into the Property in October 2010.

3. The Complainants and Trustee Reed, on behalf of the Respondent, agreed that the monthly rent would be \$1800.00 with payments to begin in October 2010. The parties agreed that the rent could be paid at any time in the month.

4. The Complainants paid the Respondent a \$2000.00 security deposit for which no receipt was provided.

5. A written lease was not provided to the Complainants at the commencement of the tenancy.

6. By an email dated March 29, 2011, in follow-up to a March 13, 2011 email, the Complainants requested that the Respondent make the following repairs (Complainants Exhibit No. 5):

1. Replace the back door
2. Replace the Garage Door
3. Clean the Fireplace
4. Screening on top of Chimney

7. During the tenancy, the Respondent made the following repairs to the Property:

August 2010 misc maintenance work	\$1500.00
August 2010 HVAC serviced	\$1139.00
August 2010 HVAC serviced	\$299.00
April 201[1] garage door replaced	\$1554.00
May 2011 fire place cleaned	\$149.00

June 2011 chimney relined	\$1800.00
July 2011 AC replaced	\$4200.00

8. The Commission finds that the Respondent did make the requested/required repairs to the Property in a timely manner.

9. The Commission finds that the Complainants replaced the lighting fixtures at the Property without the permission of the Respondent and the Complainants did not submit evidence that the lighting fixtures needed to be replaced.

10. On August 26, 2011, the Complainants received correspondence from Henry C. Clarke, Jr., attorney hired by the Respondent's real estate agent, which stated that the tenancy would terminate effective September 30, 2011, and that the Complainants were to vacate by that date, or in the alternative, that the Complainants were to enter a binding, fully ratified contract with the Respondent to purchase the Property prior to September 30, 2011, at the purchase price of \$420,000.00, and closing to occur on or before October 30, 2011. Additional requirements were stipulated in the notice.

11. The Commission finds credible Pastor McIntosh's testimony that the letter was sent out without the approval of the Respondent's Board of Trustees.

12. By email dated September 1, 2011, Henry C. Clark, Jr. apologized to the Complainants and stated that he was instructed by Pastor McIntosh to rescind his August 26th letter.

13. By email dated September 6, 2011, to the Complainants, the Respondent made the following proposal:

This is not a lease, but the terms that we would incorporate into a lease.

Given the pressure on your business and family we are offering a lease for nine months starting September 1, 2012 (sic) and ending May 31, 2012.

- Rent of \$1800.00 will be payable on the 1st of each month. As tenant you have the right of first refusal to purchase the property at the appraised price of \$420,000.00 plus any necessary repairs/capital improvements – in excess of \$1000.00 aggregate.
- Tenant must give the Board of Trustees written notice of his intention to purchase or not to purchase by March 1, 2012. If the tenant elects to purchase the property, closing must occur on/before May 31, 2012. If tenant fails to give notice by said date, the right of first refusal will expire and tenant must vacate the property by May 31, 2012.
- The Board of Trustees will engage the services of a property manager. The expense incurred will be split between the trustees

and the tenant with the cost per month to tenant to be \$75.00. This fee for service will not qualify for the rental credit toward purchase.

- In the event of a sale of the property to tenant, a maximum of 6 months of rental payments will be credited towards the purchase price.
- Each party is responsible for its own costs incurred in connection with the sale or purchase of the property.
- The tenant will be responsible for paying all utilities during the occupancy of this property.

The lease will contain the final and entire agreement between the parties and neither is bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein.

14. In response, the Complainants sent an email to the Trustee Piercey on September 8, 2011, refusing the 9 month lease offer, stating that they want to purchase the home, but “[o]nce again, we are sitting in limbo and being asked to accept terms that are dramatically unreasonable” and stating that they want a one year lease term.

15. On or about October 1, 2012, a Greater Capital Area Association of Realtors (“GCAAR”) lease was given to the Complainants which indicated that the lease term would be 12 months terminating September 30, 2012, which acknowledged the \$2000.00 security deposit paid by the Complainants.

16. In response, by email dated October 3, 2011, the Complainants indicated they were seeking the following terms: (1) 12 month lease; (2) Lease termination with 60 days notice; (3) Reimbursement for Light Fixtures and installation purchased for the house; (4) reimbursement of Garage Door Openers purchased for the house. Lastly, Paragraph #38 needs to be corrected. Paragraph 38 (Commission’s Exhibit No. 1, pg 25) of the proposed lease stated:

“Tenant acknowledges that, if requested, Tenant did receive prior to this Lease execution a copy of the proposed form of Lease in writing, complete in every material detail, except for the date, the name and address of the tenant, the designation of the premises and the rental rate without requiring execution of the Lease or any prior deposit.”

17. By email dated October 12, 2011, Sasan Nikkhah-Chalezamin, Agent for the Respondent, advised the Complainants that they would not make any alterations to the proposed lease and suggested that the Complainants seek guidance from an attorney. The email also stated:

“If the lease agreement is not acceptable you are welcome to vacate the property with a proper notice of 30 days. If you do not address this then we will send you a vacate notice and you will have 30 days to vacate the property.”

18. On October 21, 2011, the Complainants filed a complaint with the Office of Landlord-Tenant Affairs which alleged:

- (1) Landlord demands security deposit upon move-in.
- (2) Landlord consistently refused to provide Lease for tenant) over the course of a full year.
- (3) Landlord refused maintenance on property over the course of a year – states that property is an “as is” rental.
- (4) Landlord suddenly demands “non-negotiable” 7 day purchase confirmation and mandates that we can only use specified Mortgage Broker and Title Company or immediately vacate Property (notice hand-delivered and addressed to my pregnant wife to coerce).
- (5) After agreeing to one year lease and requesting that we not go to the authorities, Landlord rejects 1 year lease request and mandates 9 month lease – only with acceptance of “non-negotiable” purchase price for home; and additional \$75 per month (if we want maintenance on the home) – no consideration for Pregnancy or young child enrolled in school.
- (6) Landlord and Realtor now issues “30 [day] vacate notice” when wife is 7 months pregnant as coercion to sign 1 year lease document stating that deposit wasn’t previously required without lease – which is completely untrue.
- (7) Under threatened “30 day vacate” (again, during wife’s pregnancy and 5 year old enrolled in school) designated Realtor demands payment and signature on invalid lease (untrue statements in lease) - despite letter from Landlord directing payments to Landlord.

19. By correspondence from OLTA dated December 13, 2011, this Office informed the Complainants that Jim Reed, on behalf of the Respondent, had agreed to supply them with an accounting of their rent payments and documentation of the status of their security deposit. The correspondence also advised the Complainants that the Respondent was not currently contemplating issuing a Notice to Vacate the Property, a copy of which was forwarded to the Respondents.

20. On December 15, 2011, the Complainants, through their attorney, Eden Brown Gaines, proposed the following:

1. The Bowlds will execute the lease for the period of November 21, 2011 through November 20, 2012, provided the statement in item 38a is removed or stricken. (See paragraph 16 above).
2. The additional provision at Section 42-2 should be clarified to state that the tenant or Mr. Bowlds may terminate the lease with 60 days’ notice to George Howard Real Estate – without penalty or obligation.
3. Payment of \$23,400 as compensation for the emotional suffering and stress which resulted from the vacate notices.

4. Satisfaction of all outstanding maintenance requests and/or requirements.
5. The landlord will assume all responsibilities for any utility payments for the period between October 2010 and November 2011 which have not already been satisfied by Mr. Bowlbs.

21. By letter dated January 20, 2012, the Respondent, through its attorney, Richard Puchowicz, advised the Complainants that it would not agree to their December 15th proposals, and attached a Notice to Vacate to the Complainants that same date advising them that the tenancy is terminated effective February 29, 2012.

CONCLUSIONS OF LAW

1. The Commission concludes that the Respondent's failure to provide the Complainants a written receipt for their security deposit pursuant to § 8-203.1, "Security deposit receipt," of the Real Property Article, and to advise the Complainants of their rights pursuant to § 8-203.1 and § 8-203(f)(1)(vi) of the Real Property Article, has caused a defective tenancy.

2. The Commission concludes that Respondent's failure to comply with the requirements § 8-203(f)(1)(ii) and (vi) of the Real Property Article, State Code, forfeits the right of the Respondent to withhold any part of the Complainants' security deposit, after the Complainants' termination of tenancy, for damages.

3. The Commission concludes that Respondent made repairs in a timely manner and that the Complainants failed to substantiate that the fixtures were defective or that they were owed money for the fixtures.

4. The Commission concludes that the Respondent did not issue the January 20, 2012, Notice to Vacate in retaliation for complaints made by the Complainants. Furthermore, the Respondent presented sufficient evidence that it issued the Notice to Vacate for the following permissible reasons: (1) The Respondent at the time it entered into the lease agreement with Complainants had wanted to sell the Property but was waiting for the real estate market to rebound; (2) that the Complainants were not interested in purchasing the Property at the terms proposed by the Respondent; and (3) the Complainants were making substantial demands upon the Respondent that were not required by law.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby finds that the Respondent has forfeited its right to withhold any part of the Complainants' security deposit plus accrued interest for damages, after the Complainants' termination of tenancy.

The foregoing decision was concurred in unanimously by Commissioner Nancy Cohen, Commissioner Deanna Stewart, and Commissioner David Greenstein, Panel Chair.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules governing administrative appeals.

David Greenstein, Panel Chair
Commission on Landlord-Tenant Affairs

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